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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/018,859 | 12/26/2001 | Masayuki Kagoshima | 217649US2XPCT | 8455 |
| 22850 | 7590 | 10/28/2003 | EXAMINER | |
| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | STERRETT, JEFFREY L | |
| | | | ART UNIT | PAPER NUMBER |

2838

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
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018,659

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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10

DATE MAILED:

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 10/6/03

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

Extended statutory period for response to this action is set to expire 3 month(s), or thirty days, ever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR (a).

Disposition of Claims

Claim(s) 1-10 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
Claim(s) _____ is/are allowed.
Claim(s) 1-10 is/are rejected.
Claim(s) _____ is/are objected to.
Claim(s) _____ are subject to restriction or election requirement.

Examination Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Certified copies not received: _____

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Chappell et al (US 5,547,208).

Chappell et al discloses a vehicle (11) comprising work tools (the actual windows and/or locks in boxes 14), an engine (every motor vehicle implicitly includes a motor or engine), a main battery (12), an auxiliary battery (16), a power generator (every motor vehicle implicitly includes a power generator/alternator driven by the motor or engine), electric drive motors (the motors actually driving the windows and/or locks in boxes 14), and a switch (18) to drive the motors in an emergency operation when the motors can not be driven by the main battery or the generator.

3. Claims 3 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chappell et al.

Chappell et al teaches a vehicle as explained above and as recited by claims 3 and 4 except for specifying that the vehicle is a hybrid construction machine or a hybrid excavator. Official notice is taken that hybrid construction machines and hybrid excavators were old and known vehicles in the art at the time of the invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to have applied the teachings of Chappell et al to a hybrid construction machine or a hybrid excavator since such were old and known vehicles in the art at

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the time of the invention and since such vehicles share the same problem of unsafe conditions when the normal power sources of the vehicle fail.

4. Claims 5-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chappell et al in combination with Nakamura et al (US 5,930,996).

Chappell et al teaches a vehicle, such as a “hybrid construction machine”, as explained above and as recited by claims 5-10 except for utilizing a power varying controller responsive to the content of required work. Nakamura et al teaches power management in hybrid construction machines was an old and known expedient in the art at the time of the invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the vehicle of Chappell et al by utilizing power management or power varying controller responsive to the content of required work as taught by Nakamura et al in order to increase the efficiency of a vehicle, such as a “hybrid construction machine”.

5. Applicant's arguments filed August 6, 2003 have been fully considered but they are not persuasive.

In response to the remarks concerning the issue of a hybrid construction machine, since the recitation of “a hybrid construction machine” is in the preamble no patentable weight can be granted to this language. It has been held that a limitation in the preamble is denied patentable weight when the body of the claim is self contained and complete without dependence upon the

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preamble (Kropa v. Robie, 888 USPQ 478 (CCPA 1951)). In the case at hand nothing after the word “comprising” (the body of the claim) refers back to or needs something for completeness from anything before the word “comprising” (the preamble of the claim). Thus as long as the cited reference (Chappell et al) satisfies the limitations of the body of the claim whether or not a hybrid construction machine is disclosed is immaterial.

In response to the remarks concerning whether or not the recitations of claim 3 were obvious in view of the disclosure of Chappell et al, the criteria is not whether the specific circuitry taught by Chappell et al was applicable to an excavator but whether the inventive concept disclosed by Chappell et al was applicable to an excavator. The inventive concept set forth by Chappell et al was that motors driving certain devices need be powered from an auxiliary power source when the primary power source fails in an emergency situation. Applicant and Chappell et al simply embody this concept in different specific environments - Chappell et al in a motor vehicle, an automobile, and applicant in a hybrid construction machine, an excavator. Therefore utilizing the general inventive concept of Chappell et al in a different specific environment would have been an obvious modification of the disclosed inventive concept of Chappell et al to one of ordinary skill in the art at the time of the invention.

In response to the remarks concerning a generator output control, Chappell et al implicitly teaches a generator output control. Although Chappell et al does not explicitly set forth all the details of the motor vehicle or automobile, it is widely recognized that all motor vehicles and automobiles have generators and generator output controllers to maintain the charge on the

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battery/batteries of the motor vehicles or automobiles. Thus one of ordinary skill in the art at the time of the invention would have readily recognized that the vehicle taught by Chappell et al implicitly included a generator and generator output controller just as all such vehicles known in the art at the time of the invention included a generator and generator output controller.

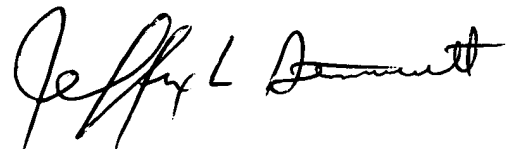
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Sterrett whose telephone number is (703) 308-1632. The examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Sherry, can be reached on (703) 308-1680. The fax phone number for this Art Unit is (703) 305-7723 and the fax phone number for this Group is (703) 305-3431 or (703) 305-3432.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

jls

October 21, 2003

A handwritten signature in black ink, appearing to read "Jeffrey L. Sterrett". The signature is fluid and cursive, with the first name "Jeffrey" being more prominent.

Jeffrey L. Sterrett

Primary Examiner

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